

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

IN RE:

JAMES NOLAN THOMPSON AND
JO ANN HENKELMAN THOMPSON,

DEBTORS.

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CASE NO. 01-10399-RLJ-13

MEMORANDUM OPINION AND ORDER

On February 10, 2003, a hearing was held on the motion for relief from stay (Motion) filed by Citifinancial Mortgage Company, Inc. (Citifinancial). Citifinancial's motion seeks relief from the stay regarding the Debtors' home which apparently secures a home equity loan made by Citifinancial to the Debtors. James Thompson and Jo Ann Thompson, the Debtors, by their answer, asserts Citifinancial's motion is groundless and requests attorney's fees and costs for defending the motion.

Background

The Motion was filed December 5, 2002, and was originally set on the court's January 8, 2003 docket. The Debtors' response asserted the Motion was filed in bad faith as all payments were current, the home was insured, and no grounds existed warranting relief. *See* Response to Motion for Relief from Stay of Citifinancial Mortgage Company Inc. ¶ 12-13. At the parties' request, the hearing was continued to the court's February docket. At the hearing, Citifinancial offered no argument or evidence in support of the Motion. Jo Ann Thompson, one of the Debtors, testified that the Debtors have made all payments required by the loan. This case was

filed May 8, 2001. Mrs. Thompson credibly testified that the Debtors had made all payments from May, 2001 through January 12, 2003. She also testified that the house is presently insured.

By letter dated February 19, 2003, the court informed the parties that it would permit Citifinancial an additional eight days from the date of the letter to present evidence, by way of affidavit, concerning the issue of whether the Debtors are entitled to sanctions and fees.

Citifinancial submitted no affidavit in response to the court's letter.

The court finds that it has jurisdiction of this matter pursuant to 28 U.S.C. § 1334(b) and 11 U.S.C. § 362, and that this is a core matter pursuant to 28 U.S.C. § 157(b)(2)(G) and 157(b)(2)(O). This Memorandum Opinion and Order contains the court's findings of fact and conclusions of law. *See* FED. R. BANKR. P. 7052.

Discussion

Attorneys and the parties they represent have a duty not to file, or cause to be filed, groundless or meritless claims. *See* FED. R. BANKR. P. 9011; *Chambers v. NASCO Inc.*, 501 U.S. 32, 45-50, 111 S. Ct. 2123, 2133-36 (1991); *Business Guides Inc. v. Chromatic Communications Enters. Inc.*, 498 U.S. 533, 549, 111 S. Ct. 922, 932 (1991). To this end, attorneys and their clients have an affirmative duty to conduct a minimal factual investigation into their allegations, in order to assure themselves and the court that a factual basis for their claims exists. *See Childs v. State Farm Mut. Auto. Ins. Co.*, 29 F.3d 1018, 1025 (5th Cir. 1994); *Smith v. Our Lady of the Lake Hosp. Inc.*, 960 F.2d 439, 444 (5th Cir. 1992). By signing a motion, an attorney affirmatively represents to the court: (1) that the attorney has, in fact, conducted such an investigation, and (2) that a factual basis for the motion exists. *See* FED. R. BANKR. P. 9011(b)(3). When evidence contrary to his client's contentions is raised, an attorney may not

simply rely on his client's word; rather, the attorney must independently assure himself that his client's claim is based on fact. *See Antonious v. Spalding & Evenflo Cos. Inc.*, 275 F.3d 1066, 1073-74 (11th Cir. 2002); *Childs*, 29 F.3d at 1025-26.

The Thompsons were current on their payments at the time the Motion was filed. Counsel for Citifinancial violated his duty by failing to verify the factual basis for the Motion in light of the Debtors' answer, or, if no such basis was forthcoming, by failing to withdraw the Motion. *See Childs*, 29 F.3d at 1025-26; *In re Gorshtein*, 285 B.R. 118, 120 (Bankr. S.D.N.Y. 2002). Citifinancial represented that "Debtor has failed to maintain current the post-petition payments due under the note and is presently in arrears for 4 payments Debtor has failed to make payments of principal or interest to Movant and has failed to pay taxes or insurance on the property, all resulting in loss and harm to Movant." Motion of Citifinancial Mortgage Company Inc. for Relief From Stay ¶ 6-7. By signing the Motion, counsel affirmatively represented to the court that he independently assured himself of a factual basis for these allegations. *See* FED. R. BANKR. P. 9011(b)(3). Neither at the hearing, nor by affidavit thereafter, did counsel present any evidence substantiating these allegations or provide any explanation for the absence of any such evidence.

The court finds that Citifinancial violated its duty by causing the Motion to be filed when Citifinancial knew or should have known that there was no factual basis for the Motion. *See Business Guides Inc.*, 498 U.S. at 549, 111 S. Ct. at 932; *Continental Air Lines Inc. v. Group Sys. Far E. Ltd.*, 109 F.R.D. 594, 600 (C.D. Cal. 1986); *In re Alberto*, 119 B.R. 985, 993 (Bankr. N.D. Ill. 1990). The facts regarding the loan (that it was current) were within the knowledge of Citifinancial. *See id.* Citifinancial was in a better position than its counsel to investigate the

facts, and had a duty to supply such facts to its counsel. *See id.* A reasonable investigation into its records would have revealed that the Debtors had made all payments called for by their note. *See In re Gorshtein*, 285 B.R. at 120; *In re Alberto*, 119 B.R. at 993.

The court has inherent authority to sanction frivolous filings, groundless motions, and motions brought without factual support in violation of Rule 9011(b)(3). *See Chambers*, 501 U.S. at 45-50, 111 S. Ct. at 2133-36; *Citizens Bank & Trust Co. v. Case (In the Matter of Case)*, 937 F.2d 1014, 1023 (5th Cir. 1991). Additionally, the court may sanction a party that causes to be filed, through its attorney, a motion that such party knew or should have known to be baseless or wholly unsupported by fact. *See Business Guides Inc.*, 498 U.S. at 549, 111 S. Ct. at 932; *Byrne v. Nezhat*, 261 F.3d 1075, 1106 (11th Cir. 2001); *Monument Builders of Greater Kansas City Inc. v. American Cemetery Assn. of Kansas*, 891 F.2d 1473, 1484 (10th Cir. 1989); *Friesing v. Vandergrift*, 126 F.R.D. 527, 529 (S.D. Tex. 1989); *In re Gorshtein*, 285 B.R. at 120. Furthermore, the court has inherent authority to sanction an attorney or his client when such party has acted wantonly or in bad faith. *See Matta v. May*, 118 F.3d 410, 416 (5th Cir. 1997).

The court finds that Citifinancial and its counsel received ample notice of potential sanctions. First, Citifinancial's counsel needs no more notice than Rule 9011 of his duties. *See Merriman v. Security Ins. Co. of Hartford*, 100 F.3d 1187, 1191 (5th Cir. 1996). Second, Debtors' answer placed Citifinancial on notice that: (1) all payments were current; and (2) that Debtors would seek sanctions as a result of the Motion. *See Response to Motion for Relief From Stay of Citifinancial Mortgage Inc.* ¶ 12-13. Third, the court informed Citifinancial, at the February 10 hearing, that the court would take the issue of sanctions under advisement. Fourth,

the court, by its February 19 letter, informed Citifinancial that “[t]he sole issue before the court is whether the Debtors are entitled to sanctions and fees.”

Citifinancial and its counsel failed to avail themselves of several opportunities to present evidence in support of the Motion or in defense of the request for sanctions. *See Merriman*, 100 F.3d at 1191-92. At the February 10 hearing, Citifinancial had the opportunity to present evidence supporting its claims, which it failed to do. Thereafter, by the court’s February 19 letter, the court afforded Citifinancial the opportunity to present evidence by affidavit within eight days of the letter, and informed Citifinancial that the court would rule based on the evidence submitted to date if it failed to provide any such evidence. Citifinancial failed to provide any such affidavit evidence.

Finally, the court finds that Citifinancial and its counsel acted wantonly and in bad faith. The court reiterates that it has the inherent authority to sanction wanton or bad faith actions. *See Matta v. May*, 118 F.3d 410, 416 (5th Cir. 1997). Wanton acts include those that are reckless, or those that are committed in violation of a duty to exercise care imposed to prevent injury to others. *See Smith v. Wade*, 461 U.S. 30, 39 n.8, 103 S. Ct. 1625, 1632 n.8 (1983); *Johnson v. Treen*, 759 F.2d 1236, 1238 (5th Cir 1985). A reckless act includes one that is committed with disregard for the truth, especially when reasons to doubt the information’s veracity are obvious. *See, e.g., United States v. Tomblin*, 46 F.3d 1369, 1376 (5th Cir. 1995).

Citifinancial and its counsel failed to investigate the factual allegations behind the Motion. They knew or should have known that the Debtors were current on their note. The Debtors’ answer asserted they were current. In response, Citifinancial and its counsel did nothing to verify the facts.

The duty not to bring a groundless motion is to prevent the costs associated with defending the motion, and to avoid a needless consumption of the court's time. *See, generally, Seawright v. Charter Furniture Rental Inc.*, 39 F. Supp. 2d 795, 804 (N.D. Tex. 1999). Citifinancial and its counsel violated this duty. Such circumstances justify the court's finding that Citifinancial's and its counsel's failures were reckless, wanton, and in bad faith. *See Johnson*, 759 F.2d at 1238. The court, therefore, awards sanctions pursuant to its inherent authority. *See Matta*, 118 F.3d at 416.

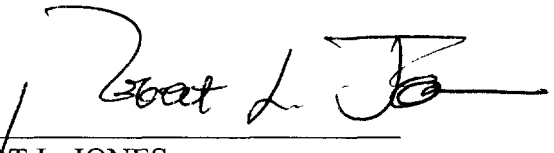
Conclusion

The Debtors have been current on the mortgage payments throughout this bankruptcy proceeding. The evidence reflects that the payments have been timely made and that Citifinancial's motion is wholly without merit. Accordingly, the court denies Citifinancial's motion to lift stay. The court awards sanctions against Citifinancial and its counsel. *See Chambers*, 501 U.S. at 45-50, 111 S. Ct. at 2133-36; *Business Guides Inc.*, 498 U.S. at 549, 111 S. Ct. at 932; *In re Gorshtein*, 285 B.R. at 120.

The Debtor incurred expenses of approximately \$75 (\$30 for gas, \$45 for meals) for attending the hearing. No evidence was submitted regarding the Debtors' attorney's fees, although Debtors' answer requests attorney's fees and costs of \$500. *See Merriman*, 100 F.3d at 1191-92. The court will award the Debtors \$75 for expenses, as well \$500 in attorney's fees requested by the Debtors' answer. The court will also issue a sanction of \$2,500. Citifinancial and its counsel are jointly and severally liable for the expenses, fees, and sanctions. Sanctions shall serve as an incentive to Citifinancial and its counsel to refrain from filing meritless motions in the future. *See In re Gorshtein*, 285 B.R. at 120.

So ORDERED.

DATED: April 8, 2003.

A handwritten signature in black ink, appearing to read "Robert L. Jones", written over a horizontal line.

ROBERT L. JONES
UNITED STATES BANKRUPTCY JUDGE

The Clerk shall provide copies to:

Attorney for Citifinancial Mortgage Company Inc.: Brian Middleton, Barrett, Burke, Wilson, Castle, Daffin & Frappier, L.L.P., 1900 St. James Place, Suite 500, Houston, TX 77056;

Attorney for Debtors: Dan Wallis, Law Offices of Phil Black, 1290 S. Willis, Suite 222, Abilene, TX 79605; and

Chapter 13 Trustee: Walter R. O'Cheskey, 2575 S. Loop 289, Suite 103, Lubbock, TX 79423.